

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

DAVID ROBERT GROGAN

§
§
§
§
§

CRIMINAL NO. 6:10-CR-111

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 13, 2011, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant David Robert Grogan. The government was represented by Mary Ann Cozby, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed federal defender Ken Hawk.

Defendant originally pled guilty to the offense of Conspiracy to Utter and Deliver Counterfeit Obligations, a Class D felony. The offense carried a statutory maximum imprisonment term of 5 years. The United States Sentencing Guideline range, based on a total offense level of 13 and a criminal history category of VI, was 33 to 41 months. On October 14, 2005, District Judge Sidney A. Fitzwater of the Northern District of Texas sentenced Defendant to 41 months imprisonment, followed by 3 years supervised release subject to the standard conditions of release, plus special conditions to include drug treatment. On July 9, 2008, Defendant completed the term of imprisonment and began his term of supervised release.

On March 27, 2009, supervised release was revoked and Defendant was sentenced to 12 months imprisonment followed by 2 years supervised release subject to the standard conditions of release, plus a special condition to include drug treatment. On March 5, 2010, Defendant began his new term of supervised release.

On September 13, 2010, District Judge Michael H. Schneider accepted transfer of jurisdiction to the Eastern District of Texas.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from committing another federal, state, or local crime. In its petition, the government alleges that Defendant violated his term of supervised release when he plead guilty to the offense of Possession of a Controlled Substance with Intent to Deliver in the 194th Judicial District Court of Dallas County, Texas.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by committing the felony offense of Possession of a Controlled Substance with Intent to Deliver, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). The Court shall then revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of VI, the Guideline imprisonment range for a Grade B violation is 21 to 27 months. U.S.S.G. 7B1.4(a). However, based on Defendant's previous revocation sentence, the actual maximum imprisonment term is 12 months.

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the government's petition. In exchange, the government agreed to recommend that Defendant serve 6 months imprisonment with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that David Robert Grogan be committed to the custody of the Bureau of Prisons for a term of imprisonment of 6 months, with no supervised release to follow. It is further **RECOMMENDED** that the place of confinement be El Reno, Oklahoma.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 14th day of December, 2011.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE